IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.01.2021

\+ **CRL. A. 518/2016**

REKHA .....Appellant

Versus

THE STATE (N.C.T.) OF DELHI .....Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sumer Kumar Sethi and Ms Dolly Sharma, Advocates.

For the Respondent :Mr Ravi Nayak, APP for State with SI Suman, PS Mandawali.

\+ **CRL. A. 555/2016 & CRL. M. (BAIL) 722/2020**

SUBHASH PANDIT .....Appellant

Versus

THE STATE (N.C.T.) OF DELHI .....Respondent

Advocates who appeared in this case:

For the Appellant : Mr Ankur Sood with Ms Romila Mandal, Advocate.

For the Respondent :Mr Ravi Nayak, APP for State with SI Suman, PS Mandawali.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeal, *inter alia*, impugning a judgment dated 30.03.2016 passed by the ASJ-01(East), Karkadooma Courts, New Delhi, whereby they were convicted of the offences for which they were charged. Rekha (the appellant in Crl. A 518/2016) was convicted for the offences punishable under Section 109 read with Section 376 of the Indian Penal Code, 1860 (hereinafter 'IPC') and Section 5 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter 'ITP Act') and Subhash (the appellant in Crl. A No. 555/2016) was convicted for committing offences punishable under Sections 366A, 376 and Section 109 read with Section 376 of the IPC and Section 5 of the ITP Act.

2. The appellant, Rekha, impugns an order on sentence dated 26.04.2016, whereby she was sentenced to (i) four years of rigorous imprisonment along with a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for committing the offence punishable under Section 109 read with Section 376 of the IPC; and (ii) seven years of rigorous imprisonment along with a fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month for committing an offence punishable under Section 5 of the ITP Act. All the sentences were directed to run concurrently.

3. The appellant, Subhash, impugns an order on sentence dated 26.04.2016, whereby he was sentenced to undergo (i) four years of rigorous imprisonment along with a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one

month for committing an offence punishable under Section 366A of the IPC; (ii) ten years of rigorous imprisonment along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months for committing an offence punishable under Section 376 of the IPC; (iii) seven years of rigorous imprisonment along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months for committing an offence punishable under Section 109 of the IPC and (iv) ten years of rigorous imprisonment along with a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for committing an offence punishable under Section 5 of the ITP Act. All sentences were directed to run concurrently.

4. The father of the victim (hereinafter 'the complainant') had alleged that his daughter/victim aged about 12 years (hereinafter 'the prosecutrix') – who was a student in fourth standard in a Government School in Mandawali– had gone to school on 29.01.2011 but had not returned back. Pursuant to his complaint, FIR bearing no. 31/2011 was registered at PS Mandawali under Section 363 of the IPC. The prosecutrix could not be found, however, on 05.09.2011 the prosecutrix returned back and thereafter, the complainant brought her to the Police Station. Thereafter, she was medically examined and her statement under Section 161 of the Cr.PC was recorded. On 06.09.2011, the statement of the prosecutrix under Section 164 of the Cr.PC was recorded.

5. The prosecution's case rests almost entirely on the testimony of the prosecutrix. It is, thus, important to examine her testimony as well as her statements recorded earlier

6. The statement of the prosecutrix under Section 161 of the Cr.PC was recorded on 05.09.2011. She stated that about seven-eight months ago, she went to the house of her friend Pooja without informing her parents. She stated that the father of her friend Pooja (that is, the accused – Subhash) took her to Kolkata and came back after leaving her in a village. She stated that she did not like it there (*gaon mein mera man nahi laga*). She informed a *Baba,* who was a resident of that village, about the same. The *Baba* called the accused, Subhash, and thereafter, the accused took her back to Delhi. She stated that the accused and his wife Reeta had changed their house and shifted to a new house in Delhi. They invited people from outside and they used to do *gande kaam* with her. She also stated that the accused Subhash, also used to do *gande kaam* with her. She stated that Pooja's mother, Reeta and her *mausi* used to get her ready and confine her to the house (*mujhe taiyar karti thi gharmain band karke rakhti thi*).She stated that in the morning (that is, the morning of 05.09.2011), the accused had gone to drop his daughter Pooja to school after bolting the door from outside. But he had not locked it. She stated that she sought help from a boy, who was roaming outside and escaped from the house. She then reached home by asking directions from strangers and narrated the incidents to her father who thereafter, took her to the Police Station.

7. The statement of the prosecutrix was recorded under Section 164 of the Cr.PC on 06.09.2011. She stated that she did not remember the date, but it was winter season when she had gone to the house of Pooja without informing and without the consent of her parents. She stated that she along with Pooja and Pooja's father whose name was Subhash, stayed at Pooja's house and thereafter, went to their village in Kolkata. She stated that in the village, she started missing her parents and wanted to go back home. The villagers called Pooja's father and thereafter, Pooja, her father and she came back to Delhi. She stated that she stayed at Pooja's house for two-four days. Thereafter, outsiders started coming to their house and Pooja and Pooja's parents used to make her do *gande kaam*. She stated that the outsiders used to remove her clothes and then used to do *gande kaam* with her. She also stated that the accused Subhash also used to *gande kaam* with her and had raped her. She stated that boys in drunken condition used to come at night and they also used to do bad acts with her. The accused had locked her in a room for days. She stated that, the day before (that is, on 05.09.2011), when the accused had gone to drop his daughter to school, he forgot to lock the door from outside and simply latched the door. She stated that she got the door opened from outside from a boy and after that she reached her house and told her father about the entire incident. She stated that when she was on her way to her house, she met Pooja. She slapped Pooja and told her that she was going to her house. She also stated that when she was leaving from their house, they had torn her clothes and that is why she came home wearing Pooja's clothes.

8. The prosecutrix was examined as PW-2. She deposed that she did not remember the exact date, however, one day her friend Pooja had asked her to get clothes as they were going somewhere for an outing. They went to the house of Pooja, where the appellant (Subhash Pandit), who is the father of Pooja, met her. Thereafter, the appellant took her to Kolkata. Her friend Pooja also accompanied her. She stated that she told the appellant Subhash that she wanted to go back to her house, however, he told her that her parents had died. She stated that after one month, she came back to Delhi and was locked in the house. She deposed that Subhash Pandit and his wife Reeta and the *Mausi* of Pooja (Rekha) all used to reside in the house. She also testified that they used to beat her and had confined her in the house. She further deposed that the appellant and his wife Reeta used to forcibly make her establish sexual relations with other persons, and if she resisted, they used to beat her and threaten her that they would throw her outside the house without any clothes. She stated that the appellant, Subhash Pandit, also had sexual intercourse with her on three to four occasions, without her consent. She stated that she was daily forced to establish sexual relations with four persons. She also stated that the accused Rekha and her friend Pooja also used to entertain customers. She testified that one day when the accused had gone to drop Pooja to her school, he had failed to lock the door of the house and had only bolted the door from outside. She asked a boy, who was playing outside, to open the door. Thereafter, she fled from there and returned to her house. She told her father about the incident and she was taken to the Police Station, where her statement was

recorded by the police. She was then taken to the hospital and her medical examination was conducted.

9. In her cross-examination, she deposed that she had not told any of her family members that her friend Pooja had asked her to bring her clothes. She stated that she was taken to the railway station in an auto. She stated that she did not tell anything about the incident to the TSR driver as the accused had covered her mouth with a cloth. She also stated that there were public persons at the railway station, however, she did not disclose the facts to any one of them. She testified that there were houses adjoining the house where she was kept in Kolkata. The *mohalla* people saw them while they were going to the house, however, she did not complain to anyone. She explained that this was because the accused used to scold her after holding her hand. She stated that when she returned from Kolkata she tried to inform a person, however, the accused tried to close her mouth. At the railway station, she again tried to inform a lady, however, the daughter of the accused threatened her. She stated that the Police Station is ten kilometers from her house and reached the police station by foot. She for the first time disclosed about the incident to the police and at that time they did not record any statement. She stated that from the police station she returned back to her house and informed her father about the incident. She deposed that her father initiated legal proceedings. She also deposed that her father was not friends with the accused, Subhash Pandit. She denied further that her father had taken any loan

of ₹ 10,000/- on 22.12.2010 from the accused in the presence of one person named Udal.

10. The father of the prosecutrix was examined as PW-1. He testified that the prosecutrix was thirteen- fourteen years (13-14 years) of age and she was studying in third/fourth class at the time of the incident. He testified that about one /one and a half years prior to the date (the date of his examination in chief), the child victim went to her school but did not return back. He stated that the next day he went to the Police Station and made a complaint (Ex. PW1/A). He continued searching for his daughter but could not find her. He testified that after about eight-nine months, the prosecutrix returned to her house and thereafter, he took her to the Police Station. He deposed that the prosecutrix had told him that her friend Pooja, had taken her to her house from school and she was detained by her and her father. Thereafter, she was taken to Kolkata by Pooja's father and was forced into prostitution. The prosecutrix was taken to the hospital for her medical examination. She was produced before the concerned court and her statement was recorded under Section 164 of the Cr.PC. He stated that he was called to PS Mandawali, when the accused persons Subhash Pandit and Rekha, were arrested and his daughter/prosecutrix had accompanied him. The prosecutrix identified the accused and thereafter, both the accused were arrested.

11. In his cross-examination, PW-1 deposed that he could have mentioned the incorrect age of the victim in his affidavit furnished to her school, which may indicate that she was underage. He denied that

the prosecutrix had eloped with a boy named Muttu. He also denied the suggestion that he had borrowed ₹30,000/- from the appellant (Subhash Pandit) or there was any quarrel between him and the appellant Subhash, when the appellant Subhash demanded the said amount.

12. HC Kaushilya deposed as PW-3. He stated that on 05.06.2013, he along with the IO, SI Vijay Kumar (PW-6) went searching for the co-accused Rekha. The accused Subhash Pandit was also with them. He stated that the accused Subhash took them to a room at Subzi Mandi Shakarpur, which was locked. While they were returning back, they found the co-accused Rekha standing near Aggrawal Sweets, near Shakarpur flyover with a child in her lap. The co-accused, Rekha, was identified by the accused Subhash. She was apprehended and was brought to the Police Station. He deposed that the co-accused Rekha was arrested vide arrest memo (Ex. PW3/A) and her personal search was conducted vide memo (Ex. PW3/B). He also deposed that the co-accused was then taken to LBS Hospital and she was medically examined.

13. Ct. Rajesh Kumar was examined as PW-5. He stated that on 04.06.2013, he along with SI Vijay Kumar (PW-6) and the complainant (PW-1) reached the flyover near Ganesh Nagar Chowk. He stated that SI Vijay Kumar (PW-6) had received information from an informer regarding the presence of the accused, Subhash Pandit. He stated that after the identity of the accused was established through his identity card, the accused was interrogated by the IO. He deposed that

the accused Subhash was arrested (arrest memo Ex. PW5/A) and his personal search was also conducted (memo Ex. PW5/B). He also deposed that he took the accused to LBS Hospital and he was medically examined.

14. SI Vijay Kumar was examined as PW-6. He testified that on 29.01.2011, the complainant, Jagdish (PW-1) had made a complaint at the Police Station that his daughter (that is, the prosecutrix/victim) had gone to school in the morning but had not returned. He stated that his statement was recorded (Ex. PW-1/A) and *rukka* (Ex. PW-6/A) was prepared. The *rukka* was handed over to the duty officer for registration of the FIR. Thereafter, he along with the complainant made efforts to search the prosecutrix, however, they were unable to locate her. He deposed that on 05.09.2011, the complainant along with the prosecutrix came to the Police Station and the complainant told him that the prosecutrix had returned home by herself. He deposed that the prosecutrix was kept in the custody of Lady Ct. Rajshree and was interrogated. He deposed that the prosecutrix was taken to LBS Hospital for her medical examination along with her father. Next day, the statement of the prosecutrix was recorded under Section 164 of the Cr.PC before the Ld. MM. He stated that on 14.09.2011, he received secret information about the co-accused Reeta and she was arrested. He also stated that on 04.06.2013, on the basis of secret information, the accused, Subhash Pandit, was arrested. He also stated that the co-accused, Rekha, was apprehended the next day from Shakarpur near Aggarwal Sweets, at the instance of the accused Subhash. He stated

that the accused Subhash was taken for his medical examination to LBS Hospital. He stated that on 05.06.2013, the prosecutrix came to the Police Station and identified the accused persons. He stated that the exhibits were sent to the CFSL and the FSL report received during the trial of co-accused Reeta indicated that no traces of semen were found on the exhibits of the prosecutrix. He stated that he prepared the supplementary chargesheet and filed the same in court.

15. As is apparent from the above, apart from the testimony of the prosecutrix, there is no evidence to convict the appellants. The Trial Court had also noted that the prosecutrix was the star witness. The Court found that the examination-in-chief of the prosecutrix was clear and unambiguous and therefore, proved the charge against the accused (the appellants herein). The Trial Court further observed that the prosecutrix was a student of fourth standard and was aged about twelve years on the day when she was reported missing in January 2011. The court further took note of a judgment dated 06.03.2013, whereby the co-accused (Reeta) had been convicted of the charges framed against her. The court proceeded on the basis that since the age of the prosecutrix was noted as twelve years in the said judgment, it was established that she was a child as defined under the ITP Act.

16. However, no evidence was led in this case to establish the age of the prosecutrix. Undisputedly, there is a serious controversy as to the age of the prosecutrix. This is so because in her statement recorded under Section 161 of the Cr.PC, her age was mentioned as twenty years. The prosecutrix was examined under Section 164 of the Cr.PC

and in that statement, her age is recorded as about eighteen years. While, the father of the prosecutrix (PW-1) had stated that the age of his daughter was about thirteen to fourteen years; in his cross-examination, he conceded that he "*may have mentioned the wrong age of the victim showing her under age*". Despite the controversy regarding the age of the prosecutrix, the prosecution did not lead any credible evidence with regard to her age.

17. Mr. Nayak, learned APP who appeared for the State also fairly conceded that there was a lapse on the part of the prosecution and the evidence before the Trial Court did not establish that the age of the prosecutrix was below sixteen years. Thus, the prosecutrix could not be considered as a child within the meaning of Clause (aa) of Section 2 of the ITP Act.

18. The second aspect of the matter is the lack of any tangible evidence. Although the charges made against the appellants are serious, there is no evidence to support most of the allegations. It is apparent that the Investigation Agency did not conduct investigation of any material value to establish the allegations against the appellants. It is alleged that the prosecutrix had been confined to a house, which was visited by numerous persons, who had established physical relations with her. However, there is no evidence as to the description of the said premises. None of the neighbours had been identified to establish that the premises in question, where the prosecutrix was allegedly kept, was visited by various persons. Thus, apart from the statement of the prosecutrix that she had been confined

to a house, where at least three to four persons would establish physical relations with her on a daily basis, there is no material whatsoever to establish the same. In addition, the prosecutrix had also stated that the accused Rekha used to also engage in establishing physical relationships with various visitors and so did her friend. If the said statement is correct, then there would be at least half a dozen persons visiting the premises on a daily basis. Yet there is no material that this fact was verified.

19. The prosecutrix was allegedly taken to a village in Kolkata, however, there is no evidence as to the identity of the village or locality where the prosecutrix was housed in Kolkata. There is no evidence whatsoever as to the identity of the *Baba* to whom she had expressed her desire to go back to Delhi. There is also no evidence that the appellant Subhash or his family had any house in Kolkata. If the statements made by the prosecutrix are correct, there would be ample corroborative evidence to support the same. However, as noticed above, there is no corroborative evidence of any of the allegations made by the prosecutrix.

20. The prosecutrix has alleged that her friend, Pooja,had also accompanied her to Kolkata, however, the investigation agency has not produced any evidence to establish the same. The attendance record of Pooja has also not been placed on record to establish that she was absent from her school immediately after the prosecutrix was reported missing.

21. Plainly, if in normal course sufficient evidence ought to have been available to support the case set up by the prosecution but the same is not led, an adverse inference ought to be drawn.

22. However, in the present case, the testimony of the prosecutrix has remained uncontroverted. Undeniably, there are inconsistencies in the statement made by the prosecutrix. The principal question to be addressed is whether the said inconsistencies are significant to raise doubts on the allegations made by her.

23. In her initial statement recorded under Section 161 of the Cr.PC, she had alleged that her friend's mother (Reeta) and her maternal aunt (*mausi*) used to get her ready and would confine her to the house (*mujhe taiyar karti thi tatha mujhe ghar me band karke rakhti thi*). She did not allege that the appellant Rekha used to beat her or force her to have sex with strangers. However, in her statement recorded under Section 164 of the Cr.PC, she affirmed that her friend's maternal aunt (*mausi*) and her mother used to force her to do *galat kaam*. In her examination-in-chief, the prosecutrix alleged that the accused (the appellants) and the co-accused Reeta, used to force her to have sex with other persons and if she resisted, she was beaten and threatened that she would be thrown out without any clothes. She alleged that the accused Rekha used to prepare her for customers. However, there was no allegation that the appellant had confined her in any manner. An allegation to the aforesaid effect was made against the accused Subhash. The prosecutrix alleged that on one occasion he had locked her in a room for two-three days.

24. Admittedly, the prosecutrix had left her home voluntarily. She had also carried her clothes, which clearly indicate that she intended to stay away from her home for more than a day. In her initial statement recorded under Section 161 of the Cr.PC, the prosecutrix stated that the accused Subhash (her friend's father) had taken her to Kolkata and had left her in the village. However, she was not happy there (*mera man nahi laga*). The prosecutrix did not make any allegation of being taken to Kolkata against her will or being confined there against her will. On the contrary, she stated that she did not feel happy there and had told one '*Baba*', who was a resident of the said village that she wanted to go back to Delhi. He had called Subhash, who brought her to Delhi.

25. In her statement recorded under Section 164 of the Cr.PC, she reiterated that she had gone with her friend Pooja to her house and the appellant, Subhash had taken her to a village in Kolkata, however, she added that he had given her jeans to wear. She did not allege that she was taken to Kolkata against her will. No such allegation was made by her in her examination-in-chief as well.

26. In her statement recorded under Section 164 of the Cr.PC, the prosecutrix did not make any allegation that the appellant Rekha used to confine her in any manner. She alleged that after her return from Kolkata, she stayed in her friend's house for a few days and thereafter, her parents made her do *ganda kaam.* Subsequently, she added that Pooja's mother and maternal aunt (*mausi*) also forced her to do *galat kaam*. She further alleged that Pooja's mother also asked her to do

galat kaam with Pooja's maternal and paternal uncles (*mama-chacha*), when they came back from their village and they did so despite her refusing to do so. It is material to note that no such allegation was made by the prosecutrix either in her earlier statement recorded under Section 161 of the Cr.PC or in her testimony before the court.

27. It is also material to note that the prosecutrix had not named the accused Rekha in either her statement recorded under Section 161 of the Cr.PC or under Section 164 of the Cr.PC but only mentioned her friend Pooja's *mausi*. Apart from the prosecutrix's testimony that Rekha also resided in the premises, there is no evidence to the aforesaid effect. As noticed above, there is no site plan or a layout plan of the premises or the material particulars of the premises where the prosecutrix was allegedly kept.

28. The version of the prosecutrix as to how she had escaped from the premises where she was kept is also contradictory. In her statement recorded under Section 164 of the Cr.PC, the prosecutrix affirmed that on one day, the appellant Subhash forgot to lock the house from outside when he went to leave his daughter Pooja to school. She stated that he had merely bolted the door and she persuaded a boy, who was roaming outside, to open the bolt. However, she went on to state that she met her friend Pooja on her way back home and slapped her. She also explained that they (the accused) had torn her clothes while she was leaving so she wore the clothes of her friend Pooja. If the prosecutrix was confined in the house and had escaped as she alleged,

there would be no occasion for anyone to tear her clothes while she was leaving and certainly no time for her to change into a fresh set of clothes.

29. In her cross examination, the prosecutrix made a further allegation that while she was returning from Kolkata, she had attempted to inform another person but, the accused (Subhash) had closed her mouth and her friend Pooja had also threatened her. She did not make any such allegation either in her statements recorded earlier or in her examination-in-chief.

30. It is necessary to bear in mind that the train journey from Delhi to Kolkata is a long one and most trains take more than a day. Yet, the prosecutrix neither remembered the date of the journey nor the name of the train.

31. Having noted the above, this Court is of the view that the inconsistencies in the statements made by the prosecutrix and her testimony are not material. This is because she has been consistent in her core allegation that she had been raped and had been compelled to engage in sex with various other persons. As noticed above, in her initial statement, she had alleged that Pooja's mother and her *mausi* used to prepare her and keep her confined inside the house. In her statement under Section 164 of the Cr.PC, she had stated, in unambiguous terms, that Pooja's *mausi* and her mother used to force her to do *galat kaam*. She also testified before the court that the accused Rekha used to force her to do *galat kaam* (sex) with

'customers'. She further alleged that the accused Rekha used to prepare her for the 'customers'.

32. In view of the above, this Court is unable to find fault with the decision of the Trial Court to convict the accused Rekha of committing an offence punishable under Section 109 of the IPC read with Section 376 of the IPC.

33. The learned counsel appearing for the appellants had contended that there was no evidence to establish any commercial angle to the alleged offences. They submitted that there is no evidence on record to establish that either of the appellants had accepted any consideration for the prosecutrix allegedly engaging in sex with various persons and therefore, the offence punishable under Section 5 of the ITP Act was not established.

34. At this stage, it is relevant to refer to Section 5 of the ITP Act, which is set out below:

> "**5. Procuring, inducing or taking person for the sake of prostitution.**—(1) any person who—
>
> (a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or
>
> (b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
>
> (c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view

to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

35. As is apparent from the plain language of Section 5 of the ITP Act, any person who procures or attempts to prepare a person, whether with or without his consent, for the purposes of prostitution would be liable to be punished for an offence punishable under Section 5 of the ITP Act. In terms of Clause (d) of Section 5(1) of the Act, any person who causes or induces a person to carry on prostitution would be punishable under the said Section.

36. The term 'prostitution' is defined under Clause (f) of Section 2 of the ITP Act as under:

> "2(f) 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly."

37. Although, there is no direct evidence that the persons with whom the prosecutrix was allegedly compelled to engage in sex had paid any consideration (whether in money or in kind) to the appellants; the prosecutrix had referred to the said persons as 'customers'. This testimony of her had remained unshaken. The prosecutrix had clearly testified that the accused used to compel her to engage in sex with various persons and as many as four persons a day. She had also referred to them as 'customers'.

38. In view of the above, there can be little doubt as to the nature of her allegations. A meaningful reading of her statements and testimony would clearly indicate that the prosecutrix had alleged a commercial angle to her being compelled to engage with, customers.

39. In view of the above, this Court also finds no fault in the decision of the Trial Court to convict the appellants for committing / abetting an offence punishable under Section 5 of the ITP Act.

40. The testimony of the prosecutrix had also proved the charges made against the accused Subhash.

41. In view of the above, this Court also finds no reason to interfere with the decision of the Trial Court in convicting the appellants for the offences for which they were charged.

42. Insofar as the sentences awarded to the appellants are concerned, the appellant Rekha has already served her sentence. Insofar as the appellant Subhash is concerned, the Trial Court had while sentencing him noted that he was a handicap person and had suffered a disability due to a paralytic attack. He also has three children, who are dependent on him. It is also not disputed that the appellant Subhash has clean antecedents and is not involved in any other case. He has already served more than eight years and eight months of his prison sentence. In view of the mitigating circumstances, this Court considers it apposite to reduce the sentence awarded to the appellant Subhash to the period already served. The said appellant would be released from custody on payment of the fines as directed. In the event of his failure to pay the fines as imposed under Section 376 of the IPC and under Section 109 of the IPC read with Section 5 of the ITP Act, the appellant would undergo a simple imprisonment for a period of one month (instead of six months) as awarded by the Trial Court.

43. The appeals are disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 25, 2021/RK